

# Calendar No. 1051

91ST CONGRESS }  
2d Session }

SENATE

{ REPORT  
No. 91-1046

## CLAYTON COUNTY JOURNAL AND WILBER HARRIS

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

### REPORT

[To accompany H.R. 1703]

The Committee on the Judiciary, to which was referred the bill (H.R. 1703) for the relief of the Clayton County Journal and Wilber Harris, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE

The purpose of the proposed legislation is to relieve the Clayton County Journal of Jonesboro, Ga., of all liability for repayment to the United States of the sum of the \$1,506.49, representing additional postage due on copies of the Journal mailed during the period from January through July 1967, as a result of the assessment of postage at incorrect rates by officials of the Post Office Department. The bill would further relieve Wilber Harris of Jonesboro, Ga., of liability for repayment to the United States of the same amount, representing the amount of that deficiency charged his account as postmaster of Jonesboro, Ga., for failure to collect the correct postage from the Clayton County Journal. The bill would authorize the refund of any amounts paid or withheld by reason of the indebtedness.

#### STATEMENT

The House of Representatives in its favorable report on H.R. 1703 relates the following:

The Post Office Department in its report to the committee on the bill has stated that it has no objection to its enactment.

The bill, H.R. 1703, was the subject of a subcommittee hearing on July 24, 1969. The testimony at that hearing and the

facts outlined in the post office report have established that the Clayton County Journal is a weekly publication, commenced in 1965, which has second-class mailing privileges at the Jonesboro, Ga., post office.

In 1967 the publisher mailed out sample copies of the Journal, pursuant to section 4359(a)(3) of title 39, United States Code, which authorizes pound rates of postage for sample copies "to the extent of 10 per centum of the weight of copies mailed to subscribers during the calendar year."

However, because sample copy mailings in this case exceeded the 10 percent allowance, the pound rates did not apply as to the excess, and postage at the higher transient second-class rates (39 U.S.C. 4362) should have been paid for such excess weight. Due to the error a postage deficiency developed in the amount of \$1,352.55. In addition, copies of the Journal which were sent to persons other than subscribers, pursuant to 39 U.S.C. 4362(3), were mailed at bulk third-class rates when the second-class transient rate was for application. This resulted in a postage deficiency of \$153.94, making the total deficiency \$1,506.49, the amount stated in the bill.

With reference to the postage deficiency ascribable to the excess sample mailings, the file discloses that the postmaster misinterpreted applicable regulations, in that he applied the 10 percent rule, discussed above, in terms of numbers of copies rather than weight of copies. That is, the 10 percent was laid off against the total estimated number of copies to be mailed to subscribers during the calendar year (1967), when it should have been applied to the total estimated weight of the copies. By the postmaster's method of computation the sample mailings were within the 10 percent limitation.

Regarding the remaining postage deficiency in the amount of \$153.94, this relates to a mailing of copies of the Journal on May 17, 1967, to nonsubscribers. These copies were made up in slightly different format than the regular copies of the particular issue, and the weight of a copy was lighter than the weight of the regular copy sent out under second-class rates. As to this the postmaster stated in this letter of explanation at the time that in his opinion the variation in weight reflected "a revamping of the paper enough to qualify it for the third-class rate. That was the opinion at the time of mailing, when the rate was applied." Actually, since the Journal held second-class mailing privileges these irregular copies fell under the second-class rate structure, and thus did not qualify as "printed matter" eligible for third-class postage rates (39 U.S.C. 4451(e)).

At the hearing on the bill, it was stated that the Clayton County Journal ceased circulation of the sample copies when it was informed by postal inspectors that the publication had exceeded its sampling allotment. The newspaper was led to believe that cessation of circulation of samples was all that would be required and that the matter would be considered closed. It was in October of 1967 that the Clayton County

Journal was advised by a Post Office Department auditor that the newspaper would still be required to pay over \$1,500 in back postage as the result of the error in determining postage by number rather than by weight and the erroneous application of third-class rates for a special issue to nonsubscribers.

The committee has concluded that legislative relief is appropriate because the error occurred because of honest mistakes in computing the postage, and further because the newspaper publisher relied on the initial determination to its own ultimate detriment. The equities of the situation are well stated in the following quotation from the Post Office Department report:

The Department is satisfied that honest mistakes in computing postage were made in this case, and we therefore have no objection to the enactment of relief legislation for the postmaster, Wilbur Harris. With regard to the Clayton County Journal, there is no doubt that legally the publication is liable for the amount of the postage deficiency. On the other hand, it is also clear that the Journal relied in good faith on postage computations made by postal personnel, and that without fault on its part the publication is now liable in the amount of \$1,506.49 because of errors made by others. In light of these circumstances, the Department would have no objection to the enactment of H.R. 14914.

The committee, after a review of all of the foregoing, concurs in the action taken by the House of Representatives and recommends that the bill, H.R. 1703 be considered favorably.

Attached hereto and made a part hereof is a letter dated July 29, 1968 from the Post Office Department.

THE GENERAL COUNSEL,  
POST OFFICE DEPARTMENT,  
*Washington, D.C., July 29, 1968.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The Postmaster General has asked me to reply to your request for a report on H.R. 14914, a bill for the relief of the Clayton County Journal and Wilbur Harris.

Section 1 of this measure would relieve the Clayton County Journal of Jonesboro, Ga., of liability to the Government in the amount of \$1,506.49, a sum representing postage deficiencies on copies of the Journal mailed during the period January through July 1967. This indebtedness arose as a result of incorrect computations of postage. Section 2 would relieve the Jonesboro postmaster, Wilbur Harris, of liability in a like amount charged to his account, as postmaster, for failure to collect the correct amount of postage.

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which authorizes pound rates of postage for sample copies "to the extent of 10 per centum of the weight of copies mailed to subscribers during the calendar year."

However, because sample copy mailings in this case exceeded the 10-percent allowance, the pound rates did not apply as to the excess, and postage at the higher transient second-class rates (39 U.S.C. 4362) should have been paid for such excess weight. Due to the error a postage deficiency developed in the amount of \$1,352.55. In addition, copies of the Journal which were sent to persons other than subscribers, pursuant to 39 U.S.C. 4362(3), were mailed at bulk third-class rates when the second-class transient rate was for application. This resulted in a postage deficiency of \$153.94, making the total deficiency \$1,506.49, the amount stated in the bill.

With reference to the postage deficiency ascribable to the excess sample mailings, the file discloses that the postmaster misinterpreted applicable regulations, in that he applied the 10-percent rule, discussed above, in terms of numbers of copies rather than weight of copies. That is, the 10 percent was laid off against the total estimated number of copies to be mailed to subscribers during the calendar year (1967), when it should have been applied to the total estimated weight of the copies. By the postmaster's method of computation the sample mailings were within the 10-percent limitation.

Regarding the remaining postage deficiency in the amount of \$153.94, this relates to a mailing of copies of the Journal on May 17, 1967, to nonsubscribers. These copies were made up in slightly different format than the regular copies of the particular issue, and the weight of a copy was lighter than the weight of the regular copy sent out under second-class rates. As to this the postmaster stated in his letter of explanation at the time that in his opinion the variation in weight reflected "a revamping of the paper enough to qualify it for the third-class rate. That was the opinion at the time of mailing, when the rate was applied." Actually, since the Journal held second-class mailing privileges these irregular copies fell under the second-class rate structure, and thus did not qualify as "printed matter" eligible for third-class postage rates (39 U.S.C. 4451(e)).

The Department is satisfied that honest mistakes in computing postage were made in this case, and we therefore have no objection to the enactment of relief legislation for the postmaster, Wilbur Harris. With regard to the Clayton County Journal, there is no doubt that legally the publication is liable for the amount of postage deficiency. On the other hand, it is also clear that the Journal relied in good faith on postage computations made by postal personnel, and that without fault on its part the publication is now liable in the amount of \$1,506.49 because of errors made by others. In light of these circumstances, the Department would have no objection to the enactment of H.R. 14914.

The Bureau of the Budget has advised that there is no objection to the submission of this report to the committee from the standpoint of the administration's program.

Sincerely yours,

TIMOTHY J. MAY.